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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,125	12/29/2000	Mitsuhiro Kanada	Q62454	6746

7590 11/05/2004

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EXAMINER

CHANG, VICTOR S

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 11/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/750,125

Applicant(s)

KANADA ET AL.

Examiner

Victor S Chang

Art Unit

1771

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 October 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 13 October 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached NOTE.
6. ☒ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

NOTE

1. With respect to Applicants' argument "Nakae discloses that aluminum hydroxide or magnesium hydroxide is most preferably used in Nakae's composition ... Only aluminum hydroxide is used in the Examples ... Nakae does not contain any disclosure regarding a method of impregnating a resin with an inert gas ... does not contain any disclosure to teach or suggest that a composite metal hydroxide is optimum in an expanding method ... Nakae does not provide any motivation to one skilled in the art to use a composite metal hydroxide as a flame retardant" (Remarks, pages 1-2, bridging paragraph), the Examiner repeats (see page 3 of Office action dated 4/13/2004) that Nakae's invention is directed to a polyolefin resin composition which has high flame retardancy and sufficient tensile elongation for practical application, and is adapted to be used as a raw material for a field in which high flame retardancy is demanded such as a foamed product (Abstract), and by adding a hydrated metal oxide to a polymer blend such as polyethylene and ethylene-based copolymer preserves a synergetic high flame retardancy, extensibility, and high foam properties (column 2, lines 52 to column 3, line 11). Nakae expressly discloses that the hydrated metal oxide has a general structural formula $MmOn \cdot xH_2O$, for example, magnesium hydroxide ($MgO \cdot H_2O$ or $Mg(OH)_2$), etc. As such, Nakae teaches the use of magnesium hydroxide flame retardant as claimed, Applicants' argument to the contrary notwithstanding. As to Applicants' argument "Nakae does not contain any disclosure regarding a method of impregnating a resin with an inert gas", the Examiner repeats (see page 2 of Office

action dated 6/21/2002) that the primary reference WO '573 is directed at a low-density microcellular thermoplastic elastomeric foams with closed cells. The foam is made using supercritical fluid CO₂ as the blowing agent (claims 1, 5-7). Applicants' continual argument against reference individually fail to recognize that the rejection is based on combined teachings of WO '573 and Nakae. Finally, regarding Applicants' argument "Nakae does not provide any motivation to one skilled in the art to use a composite metal hydroxide as a flame retardant", the Examiner again repeats (see page 3 of Office action dated 4/13/2004) that regarding the use of a "composite" (mixture) metal hydroxides, such as MgO·ZnO·H₂O, it is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose. The idea of combining them flows logically from their having been individually taught in the prior art. See MPEP § 2144.06.

With respect to Applicants argument "WO '573 is silent regarding a flame retardant ...", the Examiner notes that Applicants again argues the reference individually, and fail to recognize that WO '573 and Nakae are from the same field of endeavor, i.e., foamed polyolefin, and it would have been obvious to one skilled in the art to combine their teachings.

Finally, Mr. Takayuki Yamamoto's Declaration of unexpected results has not been entered. It is untimely to submit a Declaration after Final Office action, because it requires further consideration and Applicants have not provided good and sufficient reason why this Declaration has not been presented earlier.


2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor S Chang whose telephone number is 571-272-1474. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

VSC
Victor S Chang
Examiner
Art Unit 1771

11/2/2004


TERREL MORRIS
SUPERVISORY PATENT EXAMINER
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